

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING RELIANT REQUEST
AND CALPINE MOTION**

This ruling addresses (a) a request by Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc., (Reliant) to receive its comments late; and (b) a motion by Calpine Corporation (Calpine) for formal hearing.

1. Reliant Request

Comments on Commission implementation and enforcement of Operation Standards were due on October 6, 2004. On October 7, 2004, Reliant filed and served its comments, including a request that its comments be accepted one day late. The request is treated as a motion. No responses were received. The motion is granted.

2. Calpine Motion

On November 9, 2004, Calpine filed a motion requesting formal hearing. Calpine seeks formal hearing on implementation and enforcement of the Operation Standards and Recommended Guidelines adopted by the California

Electricity Generation Facilities Standards Committee (Committee) on October 27, 2004. No responses were filed. The motion is denied for the reasons stated below.

2.1. Record

Calpine asserts that an adequate record does not exist to support adoption of many provisions in the Operation Standards. Calpine claims that:

“A number of provisions in the Generation Operations Standards and Recommended Guidelines would require Generation Asset Owners (‘GAOs’) to comply with standards and guidelines that are not otherwise required under existing laws, rules and regulations. The current record in this proceeding does not support a finding that existing laws, rules and regulations are inadequate and should be modified. Furthermore, there is no support for the adoption of standards that go well beyond what is required by existing law. Accordingly, formal hearings are necessary to determine if the implementation and enforcement of the Generation Operation Standards is necessary to effectuate the intent and purpose of SB 39XX.” (Motion, page 2.)

The Committee was not limited to the adoption of Standards that are already required under otherwise existing laws, rules and regulations. In fact, it would essentially be a meaningless or idle act for the legislature to establish the Committee for the limited purpose of only adopting Standards that are already otherwise required under existing laws, rules and regulations.

The Committee considered its authorities and responsibilities under the law (e.g., Pub. Util. Code § 761.3). The Committee adopted what it determined to be reasonable Standards in satisfaction of the intent and purpose of SB 39XX. Calpine fails to convincingly argue that the Committee failed in its mission to effectuate the intent and purpose of SB 39XX. It is now up to the Commission to implement and enforce those Standards consistent with that same legislative

intent. Calpine fails to convincingly show that the Commission needs formal hearing to consider implementation and enforcement in the context of legislative intent and purpose, particularly as it relates to existing laws, rules and regulations.

Calpine cites an example where adopted Guidelines may exceed or be inconsistent with requirements under existing regulations enforced by other agencies (e.g., hazardous waste regulations, permits for operation). Calpine concludes that whether implementation and enforcement of particular Guidelines is necessary is a disputed issue of fact that requires formal hearing to resolve. Calpine says at hearing it will demonstrate that certain Guidelines are redundant and unnecessary to ensure that a GAO is properly operating its facilities, and that such Guidelines result in unnecessary expenses.

Calpine's concern is premature. The Committee adopted Recommended Operation Guidelines, but says it "does not intend these guidelines to be enforceable." (Operation Standards adopted October 27, 2004, Guidelines, page 6.) The extent to which Operation Guidelines may or may not be enforceable is a matter now before the Commission. It is a better use of limited time and resource of parties and the Commission to first let the Commission determine the extent to which Guidelines are enforceable. If not found enforceable, Calpine's concern is moot.

Calpine also cites Operation Standard 1 (Safety) and Operation Standard 14 (Clearances) as imposing "requirements that are both redundant to, yet differing from, existing safety regulations administered by OSHA and CalOSHA." (Motion, page 3.)

These two Standards are:

Operation Standard 1 - Safety

The protection of life and limb for the work force is paramount. GAOs have a comprehensive safety program in place at each site. The company behavior ensures that personnel at all levels of the organization consider safety as the overriding priority. This is manifested in decisions and actions based on this priority. The work environment and the policies and procedures foster such a safety culture, and the attitudes and behaviors of personnel are consistent with the policies and procedures.

Operation Standard 14 - Clearances

Work is performed on equipment only when safe. When necessary, equipment is taken out of service, de-energized, controlled, and tagged in accordance with a clearance procedure. Personnel are trained in the clearance procedure and its use, and always verify that equipment is safe before any work proceeds. Among other things:

- A. The GAO prepares and maintains a clearance procedure. The clearance procedure contains requirements for removing a component from service and/or placing a component back into service.
- B. The GAO ensures that personnel are trained in and follow the clearance procedure.

Calpine does not identify the specific requirements in either Operation Standard that impose an unreasonably redundant or different requirement from one adopted by OSHA or CalOSHA, and none are known. As such, Calpine's concern is unconvincing.

Calpine might be referring to recommended Guidelines for these two Operation Standards. If so, the same conclusion stated above applies here. That is, it is premature to hold a formal hearing before the Commission determines the extent to which Guidelines are enforceable.

2.2. Time

Calpine also asserts that parties have not had adequate opportunity to fully assess, analyze and comment upon the impacts that Operation Standards might have on the operations of generating assets. Calpine concludes that “the Commission should hold formal hearings to allow parties a fair opportunity to assess and analyze the impacts that the Generation Operation Standards may have on the operations of generation assets.” This argument is not convincing for three reasons.

First, formal hearing may only be justified based upon the identification of a material fact that is in dispute. (February 19, 2003 Scoping Memo, pages 3-4.) Calpine fails to convincingly identify any such disputed material fact.

Second, formal hearing can be cumbersome, burdensome, and expensive. It is an unwise use of limited resources of parties and the Commission to set formal hearing for the purpose of providing parties more time.

Third, to the extent the request is actually for more time, parties have had a reasonable amount of time. The proposed Operation Standards and Recommended Guidelines were first noticed on August 23, 2004. Workshops were held on September 20-21, 2004. Motion was already made and granted for more time to file comments and reply comments on implementation and enforcement of Operation Standards. (Ruling dated September 20, 2004.) Calpine does not cite to any specific item in the adopted Standards that is potentially or actually so materially changed from the proposed Standards that

more time is required. In fact, adopted changes to Operations Standards largely employ changes proposed by Joint Generating Asset Owners on October 1, 2004. I know of no adopted Operation Standard or Guideline so materially different from one previously proposed that more time is required for assessment and analysis.

IT IS RULED that:

1. The October 7, 2004 request of Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc., (Reliant) for the Commission to receive its October 6, 2004 comments one day late is treated as a motion. Reliant's October 7, 2004 motion is granted.

2. The November 9, 2004 motion of Calpine Corporation for formal hearings is denied.

Dated November 15, 2004, at San Francisco, California.

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Reliant Request and Calpine Motion on all parties of record in this proceeding or their attorneys of record.

Dated November 15, 2004, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.